



INTERNATIONAL TRADE COMMISSION

Investigation No. 337-TA-776

CERTAIN LIGHTING CONTROL DEVICES INCLUDING DIMMER SWITCHES AND PARTS THEREOF (IV)

FINAL DETERMINATION OF VIOLATION; ISSUANCE OF A GENERAL EXCLUSION ORDER AND CEASE AND DESIST ORDERS; AND TERMINATION OF THE INVESTIGATION

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has terminated the above-captioned investigation with a finding of violation of section 337, and has issued a general exclusion order directed against infringing lighting control devices including dimmer switches and parts thereof, and cease and desist orders directed against respondents American Top Electric Corp. ("American Top") and Big Deal Electric Corp. ("Big Deal"), both of Santa Ana, California; Elemental LED, LLC d/b/a Diode LED ("Elemental") of Emeryville, California; and Zhejiang Yuelong Mechanical and Electrical Co. ("Zhejiang Yuelong") of Zhejiang, China.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The

public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 15, 2011, based on a complaint filed by Lutron Electronics Co., Inc. ("Lutron") of Coopersburg, Pennsylvania. 76 *Fed. Reg.* 35015-16. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain lighting control devices including dimmer switches and parts thereof by reason of infringement of certain claims of U.S. Patent No. 5,637,930 ("the '930 patent") and U.S. Patent No. 5,248,919 ("the '919 patent"). The complaint further alleged the existence of a domestic industry. The Commission's notice of investigation named the following respondents: American Top; Big Deal; Elemental; Zhejiang Lux Electric Co. Ltd. ("Zhejiang Lux"), Zhejiang Yuelong, and Wenzhou Huir Electric Science & Technology Co. Ltd. ("Wenzhou Huir"), all of Zhejiang, China; Westgate Manufacturing, Inc. ("Westgate") of Vernon, California; Elemental LED, LLC ("Elemental LED") and Diode LED ("Diode") both of Emeryville, California; Pass & Seymour, Inc. ("Pass & Seymour") of Syracuse, New York; and AH Lighting of Los Angeles, California. The Office of Unfair Import Investigations was named as a party to the investigation.

On September 9, 2011, the Commission issued notice of its determination not to review the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 9) granting Lutron's motion to amend the complaint and notice of investigation to substitute Elemental LED, LLC d/b/a Diode LED ("Elemental") as a respondent in place of Elemental LED and Diode. On November 22, 2011 and February 27, 2012, respectively, the Commission issued

notices of its determinations not to review the ALJ's IDs (Order Nos. 10 and 15) terminating Pass & Seymour and AH Lighting from the investigation based on consent orders.

On December 12, 2011, the ALJ issued an ID (Order No. 11) finding Elemental in default under Commission Rule 210.16(b)(3) based on its own election. On January 17, 2012, the Commission issued notice of its determination to review the ID, and on review to find Elemental in default under Commission Rules 210.16(a)(2) and (b)(2). Also, on January 17, 2012, Westgate filed a notice electing to default. On March 5, 2012, the ALJ issued an ID (Order No. 17) finding Westgate in default under Commission Rules 210.16(a)(2) and (b)(2). In the same ID, the ALJ found respondents Big Deal, American Top, Wenzhou Huir, Zhejiang Yuelong, and Zhejiang Lux in default under Commission Rule 210.16 for failing to respond to the complaint and notice of investigation, and for failing to respond to the show cause order issued on February 8, 2012 (Order No. 14). On March 21, 2012, the Commission issued notice of its determination not to review the ID finding these six respondents in default.

On January 20, 2012, Lutron filed a motion for summary determination of violation of section 337 pursuant to Commission Rule 210.16(c)(2) and requested entry of a general exclusion order with respect to the '930 patent. Lutron also requested entry of a limited exclusion order with respect to the '919 patent directed against the accused products of all defaulting respondents. Lutron further requested cease and desist orders with respect to both asserted patents against all defaulting respondents, except for Westgate. The Commission investigative attorney ("IA") filed a response supporting the motion.

The ALJ issued the subject ID on June 7, 2012, granting in-part the motion for summary determination. The ALJ found that all defaulting respondents met the importation requirement

and that complainant satisfied the domestic industry requirement. *See* 19 U.S.C. §§ 1337(a)(1)(B), (a)(2). He found that each of the defaulting respondents' accused products infringe one or more of the asserted claims of the '930 patent, except for one accused product with respect to claim 178. He found that the defaulting respondents infringe the asserted claims of the '919 patent in accordance with Commission Rule 210.16(c). The ID also contained the ALJ's recommended determination on remedy and bonding. Specifically, the ALJ recommended issuance of a limited exclusion order with respect to all defaulting respondents for the asserted claims of both asserted patents. Also, he recommended cease and desist orders directed against domestic respondents Big Deal, American Top, and Elemental with respect to the asserted claims of both asserted patents. The ALJ further recommended that the Commission set a bond of 100 percent of the entered value of the covered products during the period of Presidential review.

On July 19, 2012, the Commission issued notice of its determination to review-in-part the ALJ's ID. On review, the Commission vacated all portions of the ID relating to the '919 patent because the patent expired on March 31, 2012. The Commission determined not to review the remainder of the ID. The Commission also requested written submissions on the issues of remedy, the public interest, and bonding from the parties and interested non-parties. *77 Fed. Reg.* 43612-14 (July 25, 2012). On August 2 and 9, 2012, respectively, Lutron and the IA each filed a brief and a reply brief regarding remedy, the public interest, and bonding.

The Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that the appropriate form of relief is both: (1) a general exclusion order prohibiting the unlicensed entry of lighting control devices including dimmer switches and parts thereof that infringe one or more of claims 36, 65, 94, and 178 of the

'930 patent; and (2) cease and desist orders prohibiting American Top, Big Deal, Elemental, and Zhejiang Yuelong from conducting any of the following activities in the United States: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for, lighting control devices including dimmer switches and parts thereof that infringe one or more of claims 36, 38-41, 53-56, 58, 60, 65, 67-70, 76, 82-83, 85, 87, 89, 94, 96-99, 105, 111-112, 114, 116, 118, 178, 180, 189, 193, and 197 of the '930 patent.

The Commission further determined that the public interest factors enumerated in sections 337(d)(1) and (g)(1) (19 U.S.C. §§ 1337(d)(1), (g)(1)) do not preclude issuance of the general exclusion order or the cease and desist orders. Finally, the Commission determined that there shall be a bond in the amount of 100% of the entered value of the covered products to permit temporary importation during the period of Presidential review (19 U.S.C. §§ 1337(j)). The Commission's orders and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance.

The Commission has terminated this investigation. The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in section 210.50 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.50).

By order of the Commission.

Lisa R. Barton
Acting Secretary to the Commission

Issued: October 17, 2012

[FR Doc. 2012-26042 Filed 10/22/2012 at 8:45 am; Publication Date: 10/23/2012]